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18 100 Santa Rosa Avenue, Room 8
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20 Telephone: (707) 543-3040
21 Facsimile: (707) 543-3055

22 Attorneys for Defendants

23 UNITED STATES DISTRICT COURT
24 NORTHERN DISTRICT OF CALIFORNIA

25 PATRICIA DESANTIS, individually and as
26 Successor in Interest for RICHARD
27 DESANTIS, deceased, and as Guardian Ad
28 Litem for DANI DESANTIS,

Plaintiffs,

v.

CITY OF SANTA ROSA, JERRY SOARES,
RICH CELLI, TRAVIS MENKE, PATRICIA
MANN and DOES 1 through 25, inclusive,

Defendants.

) Case No.: C 07 3386 JSW

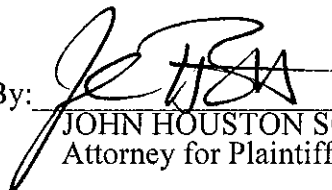
) **STIPULATION AND [PROPOSED]**
) **ORDER TO ALLOW PLAINTIFFS TO**
) **FILE A FIRST AMENDED COMPLAINT**

1 The parties stipulate to allow Plaintiffs to file a First Amended Complaint to add a
2 state wrongful death cause of action to the Complaint now that their six month claim has
3 been denied.

4 The parties also stipulate that Defendants shall file their answer to the First Amended
5 Complaint within ten (10) days of service of the amended complaint.
6

7
8
9 **DATED:** October 30, 2007

SCOTT LAW FIRM

10
11 By: 
12 JOHN HOUSTON SCOTT
13 Attorney for Plaintiffs

14 **DATED:** October __, 2007

15
16 By: _____
17 CAROLINE FOWLER
18 Attorney for Defendants

19 **ORDER**

20 Based on the stipulation of the parties, and good cause appearing therefor;

21 **IT IS HEREBY ORDERED** that the plaintiffs may file their First Amended Complaint
22 to add a state wrongful death claim as a supplemental claim to the Section 1983 claims.
23

24
25 **DATED:**

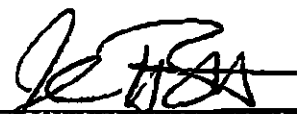
26 Honorable Jeffrey S. White
27 U.S. District Court Judge
28

1 The parties stipulate to allow Plaintiffs to file a First Amended Complaint to add a
2 state wrongful death cause of action to the Complaint now that their six month claim has
3 been denied.

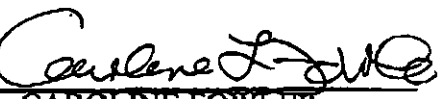
4 The parties also stipulate that Defendants shall file their answer to the First Amended
5 Complaint within ten (10) days of service of the amended complaint.
6

7
8
9 DATED: October 30, 2007

SCOTT LAW FIRM

10
11 By: 
12 JOHN HOUSTON SCOTT
13 Attorney for Plaintiffs

14 DATED: October 31, 2007

15
16 By: 
17 CAROLINE FOWLER
18 Attorney for Defendants

19 ORDER

20 Based on the stipulation of the parties, and good cause appearing therefor;

21 IT IS HEREBY ORDERED that the plaintiffs may file their First Amended Complaint
22 to add a state wrongful death claim as a supplemental claim to the Section 1983 claims.
23

24 DATED:

25
26 Honorable Jeffrey S. White
27 U.S. District Court Judge
28

EXHIBIT “A”

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9 Attorneys for Plaintiffs

10
11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA

13 PATRICIA DESANTIS, individually and as)
Successor in Interest for RICHARD)
14 DESANTIS, deceased, and as Guardian Ad)
Litem for DANI DESANTIS,)
15)
Plaintiffs,)
16 v.)
17 CITY OF SANTA ROSA, JERRY)
SOARES, RICH CELLI, TRAVIS MENKE,)
18 PATRICIA MANN and DOES 1 through)
25, inclusive,)
19 Defendants.)
20)
21)

Case No. C 07-03386 JSW

**FIRST AMENDED COMPLAINT FOR
DAMAGES**

(42 U.S.C. § 1983)

JURY TRIAL DEMANDED

COMES NOW PLAINTIFFS, who complain of Defendants, and each of them, and alleges as follows:

I. JURISDICTION AND VENUE

1. This action arises under Title 42 of the United States Code § 1983. Jurisdiction is conferred pursuant to Title 28 of the United States Code §§1331 and 1343.

2. The claims alleged herein arose at or near Santa Rosa California. Venue of this action lies in the United States District Court for the Northern District of California. 28 U.S.C. § 1391(b)(2).

II. PARTIES

3. Plaintiff Patricia DeSantis is the wife of Richard DeSantis, deceased. They were married on December 18, 1998. Patricia DeSantis brings this action as an heir of the decedent and as Successor in Interest of the decedent.

4. Plaintiff Dani DeSantis is the daughter and heir of the decedent, Richard DeSantis. At all times mentioned herein, Dani DeSantis was a minor, born on April 21, 2004. This action is brought by Patricia DeSantis on behalf of Dani DeSantis as her guardian ad litem.

5. Defendant City of Santa Rosa, and at all times mentioned herein was, a municipal corporation duly organized and existing under the laws of the State of California.

6. Defendant Jerry Soares, at all times mentioned herein, was a police officer employed by the Santa Rosa Police Department as a sergeant.

7. Defendant Rich Celli, at all times herein mentioned was a police officer employed by the Santa Rosa Police Department as a sergeant.

8. Defendant Travis Menke, at all times mentioned herein, was a police officer employed by the Santa Rosa Police Department.

9. Defendant Patricia Mann, at all times mentioned herein, was a police officer employed by the Santa Rosa Police Department.

10. Plaintiffs do not presently know the true names and capacities of Defendants DOES 1 through 25, inclusive, and therefore sue them by these fictitious names. Plaintiffs are

1 informed and believe, and on that basis allege, that DOES 1 through 25, and each of them, were
2 responsible in some manner for the injuries and damages alleged herein and claimed in this lawsuit.
3 Plaintiffs will seek leave to amend this Complaint to add their true names and capacities when they
4 have been ascertained.

5 11. In doing the acts and/or omissions alleged herein, Defendants and each of them acted
6 within the course and scope of their employment for the City of Santa Rosa and under color of
7 authority and/or under color of state law.

8 12. In doing the acts and/or omissions alleged herein, Defendants, and each of them,
9 acted in concert with each of said other Defendants herein.

10 III. STATEMENT OF FACTS

11 13. On Easter Sunday, April 8, 2007, Richard DeSantis, his wife and two children had
12 dinner with other family members. Richard DeSantis was planning to return to work the next day
13 after being out with a disabling leg injury. During his recovery from leg surgery Richard DeSantis
14 was diagnosed with bi-polar disorder.

15 14. Later that night Richard DeSantis told his wife, Patricia DeSantis, that he heard
16 (noises/voices) in the attic. His wife tried to assure him that everything was fine. Sometime
17 thereafter Richard DeSantis fired shots into the ceiling. His wife secured the gun and called 911 for
18 medical assistance. She reported that her husband was bi-polar and needed help.

19 15. Soon thereafter several police officers arrived instead of an ambulance, or medical
20 professionals. The police did not attempt to provide medical attention. Rather, the police drew their
21 weapons, prepared for combat, and ordered Richard DeSantis to come out of the house.

22 16. Richard DeSantis and his wife, holding their two year old daughter Dani, came out of
23 the house in plain view of the police officers. The officers were positioned approximately 80 feet
24 away, with guns drawn. The officers ordered Richard DeSantis to approach them. His wife told the
25 officers that the gun was in the house and that this was a mental health issue. She also physically
26 demonstrated that her husband was unarmed.
27

1 by inadequate training, supervision, and/or discipline of officers by the Santa Rosa Police
2 Department regarding the use of force; (3) were caused by deliberate indifference of the Santa Rosa
3 Police Department to the excessive use of force; and/or (4) were ratified by final decision-makers of
4 the Santa Rosa Police Department.

5 WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

6
7 **THIRD CAUSE OF ACTION**

8 **(42 U.S.C. §1983 - Deliberate Indifference)**

9 31. Plaintiffs hereby re-allege and incorporate by reference as though fully set forth
10 herein all prior paragraphs of this Complaint.

11 32. In doing the acts and/or omissions alleged herein, Defendants Jerry Soares,
12 Rich Celli, Travis Menke, Patricia Mann, and Does 1 - 25, and each of them, were deliberately
13 indifferent to the need to summon or provide emergency medical care for Richard DeSantis, in
14 violation of his rights under the Fourteenth Amendment to the United States Constitution.

15 WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

16
17 **FOURTH CAUSE OF ACTION**

18 **(42 U.S.C. §1983 - Deliberate Indifference)**
(Against CITY OF SANTA ROSA)

19 33. Plaintiffs hereby re-allege and incorporate by reference as though fully set forth
20 herein all prior paragraphs of this Complaint.

21 34. Defendants' failure to and/or delay in providing emergency medical care as alleged
22 herein (1) was caused by customs or policies of the Santa Rosa Police Department; (2) was caused
23 by inadequate training, supervision, and/or discipline of officers by the Santa Rosa Police
24 Department; (3) was caused by deliberate indifference of the Santa Rosa Police Department; and/or
25 (4) was ratified by final decision-makers of the Santa Rosa Police Department.

26 WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

FIFTH CAUSE OF ACTION

**(42 U.S.C. SECTION 1983)
(DEPRIVATION OF FAMILIAL RELATIONSHIP)
(Against all Defendants)**

35. PLAINTIFFS hereby re-allege and incorporate by reference as though fully set forth herein all prior paragraphs of this Complaint.

36. By and through the acts and omissions alleged herein, Defendants, and each of them, deprived Plaintiffs of the familial relationship with their husband and father thereby violating said Plaintiffs' rights under the First and/or Fourteenth Amendments of the United States Constitution.

WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

SUPPLEMENTAL STATE CLAIM

**SIXTH CAUSE OF ACTION
(WRONGFUL DEATH - C.C.P § 377.60)**

37. PLAINTIFFS hereby re-allege and incorporate by reference as though fully set forth herein all prior paragraphs of this Complaint.

38. In doing the acts and/or omissions alleged herein the defendants, and each of them, negligently or recklessly cause the death of Richard DeSantis. The City of Santa Rosa is liable under the doctrine of *respondeat superior*. As a result of the negligence or recklessness of the defendants, the plaintiffs suffered injuries and damages as are alleged herein.

WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

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JURY TRIAL DEMAND

Plaintiffs hereby requests a jury trial on all issues so triable.

PRAYER

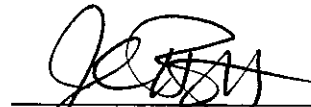
1. For compensatory damages and other special damages according to proof;
2. For general damages according to proof;
3. For punitive damages against the individual Defendants according to proof;
4. For prejudgment interest at the legal rate according to proof;
5. For costs and attorney's fees; and
6. For such other relief as the Court may deem proper.

Respectfully submitted,

SCOTT LAW FIRM

Dated: November 12, 2007

By:



John Houston Scott,
Attorney for Plaintiff